S.B.CIVIL WRIT PETITION NO.2751/2007.
Prakash Mal & Anr.
Vs.
Rent Tribunal Jalore & Anr.

Date of Order :: 14th August 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Vinay Jain, for the petitioners.
Mr. Praveen Solanki for
Mr. S.C.Maloo, for the respondents.

By the impugned order dated 02.03.2007 (Annex.6), the Rent Tribunal, Jalore has proceeded to decide two applications submitted by the petitioner-tenant in Case No.76/2005.

The petitioner-tenant, with reference to Section 65 of the Evidence Act sought permission to produce on record photostat of a receipt as secondary evidence and the Tribunal has proceeded to accept the said application with the observations that though the landlord has raised question about existence of the document and has raised objection against its late filing but it would be for the tenant to prove that such receipt came into existence and its original was retained by the landlord and to clear all other doubts in that relation.

Another application was moved by the petitioner-tenant under Section 151 CPC read with Section 65 of the Evidence

Act raising objection in relation to a document in the nature of receipt produced by the landlord and marked as Ex.6 that the said document was admittedly a copy prepared from a copy and, therefore, it was not a primary evidence; and as no permission was taken from the Tribunal for producing secondary evidence, the document could not be received in evidence. The learned Tribunal has proceeded to reject such application moved by the petitioner with the observations that all the facts concerning the said document Ex.6 shall have to be proved by the applicant-landlord including that such receipt was in fact prepared, that its carbon copy was available in the receipt book that has been lost, and that the receipt was in the amount of Rs.1,000/- etc; and the document Ex.6 would be of help to the applicant only upon clarification of such aspects. The Tribunal has further observed that landlord ought to have moved application for permission to adduce secondary evidence but despite his having not done do, the document was kept on record as a piece of secondary evidence and the burden would be on the landlord to prove it being that of actual receipt. By way of this writ petition the petitioner-tenant seeks to question the part of the order aforesaid rejecting his objections regarding the document Ex.6.

The Tribunal, while passing the questioned part of order impugned has observed,

> "हमने बहस सुनी व पत्रावली का अवलोकन किया । यहाँ प्रार्थी ने अपनी साक्ष्य में पेश अपने शपथपत्र के पैरा नं.2 में जिस रसीद प्रदर्श-6 का जिक्र किया है, उसके लिए वह कहता है कि रसीद बुक में मूल प्रति व द्वितीय प्रति (कार्बन डालकर) दो प्रति में तैयार की गयी है और दोनों पर ही अलग-अलग विपक्षी ने अपने हस्ताक्षर किए थे । रसीद बुक की कार्बनप्रति की फोटो प्रति को बतौर प्रदर्श-6 वह पेश कर रहा है, जबकि जिस कार्बन कॉपी पर विपक्षी के हस्ताक्षर थें, वह खो चुकी है । इस प्रकार प्रार्थी के अनुसार, रसीद की मूल प्रति विपक्षी को दी थी तथा कार्बन कॉपी पर हस्ताक्षर होने के कारण, वह भी मूल के रूप में ही वजूद रखती थी, जिसके खो जाने पर वह उसकी फोटो प्रति को रेकर्ड पर लाया है । विपक्षी ने इसको बनावटी कहा है । यह तथ्य दोनों पक्षकारान की साक्ष्य से ही तय होगा तथा कानूनन ये सारी जिम्मेवारी स्वयं प्रार्थी पर होगी कि वह स्पष्ट तौर पर साबित करें कि ऐसी कोई रसीद दो प्रति में तैयार हुई थी, दोनों पर खुद अप्रार्थी ने हस्ताक्षर किए थें, नीचे की जो कार्बन प्रति रसीद बुक में थी, वह अब खो चुकी है । साथ ही यह रसीद वास्तव में एक हजार रूपये देने पर तैयार की गयी थी, आदि सारी बातों को जब प्रार्थी कानूनन स्पष्ट तौर पर साबित कर देगा तो ही प्रदर्श-6 उसके लिए मददगार होगा । इन टिप्पणियों के साथ, विपक्षी की जो दरख्वास्त इसे रेकर्ड से हटाने बाबत् है, उसे खारिज किया जाता है । जहाँ तक इसको बतौर द्वितीय साक्ष्य पढ़े जाने के लिए दरख्वास्त देने का संबंध है, प्रार्थी को ऐसा करना चाहिए था, ऐसा नहीं करने पर भी, इसे रेकर्ड पर बतौर द्वितीय साक्ष्य रखा जाता है और इसको संदेह से दूर वास्तविक रसीद होने को साबित करने का भार उस स्वयं पर रहता है ।"

In the circumstances of the case, and for the procedure provided for consideration of the petitions for eviction, and view of Sections 15 and 21 of the Rajasthan

Rent Control Act, 2001, the observations as made by the Tribunal remain unexceptionable and cannot be said to be leading to any injustice that would require correction in the writ jurisdiction of this Court.

The writ petition fails and is, therefore, dismissed.

(DINESH MAHESHWARI),J.

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